

Office of the Secretary of Defense

Pt. 197, App. A

Branch requesters must have a Department of Energy issued "Q" clearance to access CNWDI information.

§ 197.5 Responsibilities.

(a) The Director of Administration and Management, Office of the Secretary of Defense, (DA&M, OSD), or designee shall, according to the Deputy Secretary of Defense Memorandum dated August 25, 1993, be the approval authority for access to DoD classified information in OSD Component files and in files at the National Archives, Presidential libraries, and other similar institutions.

(b) The Heads of the OSD Components, when requested, shall:

(1) Determine whether access is for a lawful and authorized Government purpose or in the interest of national security.

(2) Determine whether the specific records requested are within the scope of the proposed historical research.

(3) Determine the location of the requested records.

(4) Provide a point of contact to the OSD Records Administrator.

(c) The OSD Records Administrator shall:

(1) Exercise overall management of the Historical Research Program.

(2) Maintain records necessary to process and monitor each case.

(3) Obtain all required authorizations.

(4) Obtain, when warranted, the legal opinion of the General Counsel of the Department of Defense regarding the requested access.

(5) Perform a mandatory declassification review on documents selected by the researchers for use in unclassified projects.

(6) Provide to prospective researchers the procedures necessary for requesting access to OSD Component files.

(d) The Researcher shall provide any information and complete all forms necessary to process a request for access.

§ 197.6 Procedures.

The procedures for processing and/or researching for access to OSD Component files are in appendices B, C, and D to this part.

APPENDIX A TO PART 197—EXPLANATION OF FREEDOM OF INFORMATION ACT (5 U.S.C. 552) EXEMPTIONS

A. Exemptions

Exemption	Explanation
(b)(1)	Applies to information that is currently and properly classified pursuant to an Executive Order in the interest of national defense or foreign policy (See E.O. 12958 and DoD 5200.01-R) (Sec 1.4. Classification Categories from E.O. 12958 are provided on the next page);
(b)(2)	Applies to information that pertains solely to the internal rules and practices of the Agency; this exemption has two profiles, "high" and "low." The "high" profile permits withholding a document which, if released, would allow circumvention of an Agency rule, policy, or statute, thereby impeding the Agency in the conduct of its mission. The "low" profile permits withholding if there is no public interest in the document, and it would be an administrative burden to process the request;
(b)(3)	Applies to information specifically exempted by a statute establishing particular criteria for withholding. The language of the statute must clearly state that the information will not be disclosed;
(b)(4)	Applies to information such as trade secrets and commercial or financial information obtained from a company on a privileged or confidential basis which, if released, would result in competitive harm to the company;
(b)(5)	Applies to inter- and intra-Agency memoranda that are deliberative in nature; this exemption is appropriate for internal documents that are part of the decision-making process, and contain subjective evaluations, opinions, and recommendations;
(b)(6)	Applies to information the release of which could reasonably be expected to constitute a clearly unwarranted invasion of the personal privacy of individuals; and
(b)(7)	Applies to records or information compiled for law enforcement purposes that could reasonably be expected to interfere with law enforcement proceedings; would deprive a person of a right to a fair trial or impartial adjudication; could reasonably be expected to constitute an unwarranted invasion of the personal privacy of others; disclose the identity of a confidential source; disclose investigative techniques and procedures; or could reasonably be expected to endanger the life or physical safety of any individual.

See Chapter III of DoD 5400.07-R for further information.

B. Extract From E.O. 12958

Section 1.4. Classification Categories. Information shall not be considered for classification unless it concerns:

(a) Military plans, weapons systems, or operations;

(b) Foreign government information;

(c) Intelligence activities (including special activities), intelligence sources or methods, or cryptology;

(d) Foreign relations or foreign activities of the United States, including confidential sources;

(e) Scientific, technological, or economic matters relating to the national security, which includes defense against transnational terrorism;

(f) United States Government programs for safeguarding nuclear materials or facilities;

(g) Vulnerabilities or capabilities of systems, installations, infrastructures, projects, plans, or protection services relating to the national security, which includes defense against transnational terrorism; or

(h) Weapons of mass destruction.

APPENDIX B TO PART 197—PROCEDURES FOR HISTORICAL RESEARCHERS PERMANENTLY ASSIGNED WITHIN THE EXECUTIVE BRANCH WORKING ON OFFICIAL PROJECTS

1. The Head of each OSD Component, when requested, shall:

a. Make a written determination that the requested access is essential to the accomplishment of a lawful and authorized Government purpose, stating whether the requested records can be made available; if disapproved, cite specific reasons.

b. Provide the location of the requested records, including accession and box numbers if the material has been retired to the WNRC.

c. Provide a point of contact for liaison with the OSD Records Administrator if any requested records are located in OSD Component working files.

2. The OSD Records Administrator shall:

a. Process all requests from Executive Branch employees requesting access to OSD Component files for official projects.

b. Determine which OSD Component(s) originated the requested records and, if necessary, request an access determination (paragraph 1.a. of this appendix) from the OSD Component(s) and the location of the requested records, including accession and box numbers if the records are in retired files.

c. Request authorization for access from other Agencies as necessary:

(1) By the terms of the "Interagency Agreement on Access for Official Agency Historians," hereafter referred to as "the Agreement", historians employed by a signatory Agency may have access to the classified information of any other Agency signatory to the Agreement found in OSD files. The Central Intelligence Agency (CIA) and National Security Council (NSC) are not signatories to the Agreement. Authorization for access must be obtained from these Agencies, as well as from any other non-signatory Agency whose classified information is expected to be found in the files to be accessed.

(2) If the official historian is employed by an Agency that is not a signatory to the Agreement, authorization for access must be obtained from the CIA, NSC, Department of State (DoS), and any other non-DoD Agency whose classified information is expected to be found in the files to be accessed.

(3) If the requester is not an official historian, authorization for access must be obtained from the CIA, NSC, DoS, and any other non-DoD Agency whose classified information is expected to be found in the files to be accessed.

(4) Make a written determination as to the researcher's trustworthiness based on the researcher having been issued a security clearance.

(5) Compile all information on the request for access to classified information to include evidence of an appropriately issued personnel security clearance and forward the information to the DA&M, OSD, or designee, who shall make the final access determination.

(6) Notify the researcher of the authorization and conditions for access to the requested records or of the denial of access and the reason(s).

(7) Ensure all conditions for access and release of information for use in the project are met.

(8) Make all necessary arrangements for the researcher to visit the WNRC and review the requested records if they have been retired there.

(9) Assign a member of his staff to supervise the researcher's copying of pertinent documents at the WNRC. Provide a copier and toner cartridge or appropriate consumable supplies to be used by the researcher to copy the documents.

(10) If the records are maintained in an OSD Component's working files, arrange for the researcher to review the material and make copies of pertinent documents in the OSD Component's office.

(11) Notify the National Archives or Presidential library concerned of the authorization and conditions for access, if the researcher desiring to research material in those facilities is not an official historian or is an official historian employed by an Agency that is not a signatory to the Agreement.

3. The researcher shall:

a. Submit a request for access to OSD files to the OSD Records Administrator, 1155 Defense, Pentagon, Washington, DC 20301-1155.

The request must contain the following information:

(1) The name(s) of the researcher(s) and any assistant(s), level of security clearance, and the office to which the researcher is assigned.

(2) Provide a statement on the purpose of the project, including whether the final product is to be classified or unclassified.